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No.

In The

Supreme Court of the United States

In re

CHAGANTI & ASSOCIATES, P.C.,

Petitioner

On Petition for a Writ of Mandamus and/or in the alternative Prohibition to the United States District Court for the Eastern District of Missouri

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QUESTIONS PRESENTED

Whether this Court should issue a Writ of Mandamus and/or Prohibition to a District Court, which held that it was contempt of court if a party appeals a District Court's vague, uncertain and indefinite order, compliance with which order was not only impossible because of vagueness but also would have rendered the pending appeal moot?

CORPORATE DISCLOSURE STATEMENT

Petitioner Chaganti & Associates, P.C. is a Missouri corporation with principal place of business in Missouri. It has no parent and no publicly held entity owns 10% of its corporate stock.

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PETITION FOR A WRIT OF MANDAMUS AND/OR IN THE ALTERNATIVE PROHIBITION

Petitioner, Chaganti & Associates, P.C., hereby respectfully petitions that a Writ of Mandamus and/or in the alternative Prohibition be issued directing the District Court, Hon. District Judge Henry E. Autrey to vacate the order dated April 14, 2005 in the case *Chaganti & Associates, P.C.,* v. *Nowtony*, Case No. 03-CV-501 HEA, in which order the District Court held Plaintiff in contempt of court for not executing unspecified documents, which were vague as to their contents, and which if executed, would have rendered a pending appeal moot.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit (App., *infra*, 1a-14a) is reported at 470 F.3d 1215. The orders of the District Court for the Eastern District of Missouri (App., *infra*, 18a-21a) are unreported.

JURISDICTION

This Court has jurisdiction to correct the District Court's decision to hold Petitioner in contempt of court. 28 U.S.C. §§ 1651(a) and 2106. The District Court's order of contempt was dated April 14, 2005, (App., *infra*, at 19a-21a), and the Eighth Circuit Court of Appeals' denial of the Petition for a Writ of Mandate is dated December 5, 2006. (App., at 1a-14a). A timely filed petition for rehearing was denied on January 16, 2007. App., at 15a.

CONSTITUTIONAL AND STATUTORY AND PROVISIONS INVOLVED

The Fifth Amendment to the US Constitution provides, in relevant part, "No person shall * * * be deprived of life, liberty or property, without due process of law * * *."

* * *

The All-Writs Act states, in pertinent part: "[A]ll courts * * * may issue all writs necessary or appropriate in aid of their respective jurisdictions * * *." 28 U.S.C. § 1651(a).

GROUNDS IN FAVOR OF A WRIT

Petitioner respectfully requests this Court to issue a Writ of Mandamus directing the U.S. District Court for the Eastern District of Missouri, Honorable District Judge Henry E. Autrey, (hereafter "District Court") to vacate its ruling of April 14, 2005, see App., *infra*, at 19a-21a, because the district court lacked jurisdiction over a matter on which an appeal was pending, because the practical effect of the court's contempt order is to punish a party for appealing its decision, because the District Court imposed contempt sanctions without proper notice, opportunity for discovery or a jury trial, because the District Court did not countenance appellant's valid reasons for noncompliance with its order, and because the District Court's action is an unlawful usurpation of power by a lower court.

This Court has authority to issue a writ of mandamus to reverse the lower courts' erroneous contempt order under the All Writs Act, 28 U.S.C. § 1651(a). *Schlaegenhof* v. *Holder*, 379 U.S. 104, 11-12 (1964). "A traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise it authority when it is its duty to do so." *Thermtron Prods, Inc.* v. *Hermansdorfer*, 423 U.S. 336, 352 (1975). "Repeated decisions of [the Supreme Court] have established the rule * * * that the writ will lie in a proper case to direct a subordinate Federal court to decide a pending cause, * * * or to require a Federal court of inferior jurisdiction to reinstate a case, and to proceed to try and adjudicate the same." *Id.*, at 352.

As demonstrated below, this Court should exercise its authority to correct, by a writ of mandamus, the lower courts' clearly erroneous finding of contempt in effect for appealing its vague, indefinite, and uncertain order too execute unspecified "documents" to effectuate settlement.

A writ of mandate is appropriate to correct the District Court's unlawful finding of contempt. The contempt finding and the impending contempt hearing are unlawful because they were designed to coerce a party to forego its right to appeal by taking actions that render the party's appeal moot. Such coercion allows an inferior tribunal to usurp the higher court's power by preventing a review of the lower court's ruling. This was the reason jurisdiction transfers to the higher court once a notice of appeal is filed. In this case, after holding a hearing on defendants' motions for contempt, the District Court further erred when it refused to accord due process protections to Petitioner.

Petitioner filed for a petition for a writ of mandate and for stay with the court of appeals for the Eighth Circuit. Petitioner also filed a direct appeal from the final decision of the District Court whereby the District Court held that the parties had settled the case.

The Court of Appeals for the Eighth Circuit affirmed the District Court's power to hold Petitioner in contempt, and held that a party could be held in contempt of violating a vague order. App., at 1a-14a. The Eighth Circuit vacated the contempt holding on the grounds that the District Court did not clarify whether the contempt finding was to vindicate its authority or as a remedial measure to compensate the defendants. *Id.*, at 14a. It ruled, "*On remand, therefore, if C&A does not promptly comply with the court's order to effectuate the settlement*, the court should specify whether the monetary sanctions are compensatory or coercive in nature, and explain the basis for whatever amount is ordered." *Id.* (emphasis added).

Petitioner sought rehearing and rehearing en banc which were denied without discussion. App., at 15a. Before the period for filing the Petition for a Writ of Certiorari with the Supreme Court is expired, defendants

have filed a yet another motion for contempt with the District Court, and the District Court has scheduled a hearing on this matter on March 8, 2007.

In light of the present threat of contempt once again before the right to file a petition for certiorari with this Court is exercised, Petitioner is placed in a situation similar to that it faced when the matter was before the court of appeals. Then the court of appeals stayed the contempt order pending its ruling on the merits of the appeal.

Because there is no other adequate or available remedy, Petitioner respectfully requests that a Writ of Mandate issue in this matter. *Cf. Garfield* v. *United States ex rel. Goldsby*, 211 U.S. 249, 261-262 (1908) (where there is an actual or threatened personal injury by action "*ultra vires*, and beyond the scope of * * * authority," mandamus will issue to "restore the status of the parties").

STATEMENT OF PERTINENT FACTS

In the underlying litigation, Chaganti & Associates, P.C., sued defendants Dr. Nowotny and Dr. Vardeleon for tortious interference with its business relations with St. Anthony's Medical Center ("the hospital") and for "unlawful restraint of trade." (App., at 2a). Forty five days after they were served, defendants claimed that they "for the first time" realized that the claim "unlawful restraint of trade" raised a federal question and removed the case to the federal court. Petitioner timely moved the district court to remand the case, which denied the motion[1]. *Id.*

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[1] One of the issues to be raised on certiorari is whether the District Court had subject matter jurisdiction in view that the defendants removed the case untimely. The Eighth Circuit ruled that this case was not about "artful pleading" and conflicted with other courts of appeals. See *In Re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599 (7th Cir. 1997)(state court

(Continued on following page)

Roughly one and half years later, in September 2004, Mr. Winthrop Reed, counsel for defendants, claimed that the parties had reached a settlement and moved to enforce the settlement. Reed gave a declaration stating that the parties had settled *under the terms laid out by the nonparty hospital.* Petitioner disagreed that there was "settlement" and stated that they were merely discussions between attorneys. (App., at 2a). On December 1, 2004, without any evidentiary hearing that Petitioner requested, the District Court affirmed the defendants' version of facts and ordered Petitioner to execute unspecified "documents" necessary to effectuate settlement within ten days or face sanctions. (App., at 18a). On December 9, 2004, Petitioner filed a notice of appeal from that order. On December 9, 2004, Petitioner also filed a "Motion to Stay

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antitrust case was held removable because the substantive provisions of the state antitrust laws were similar to that of the federal antitrust statutes.); *Cantrell v. Great Republic Ins. Co.*, 873 F.2d 1249 (9th Cir. 1989)(inartfully pled complaint provided sufficient notice for removal); *Akin* v. *Ashland Chem. Co.*, 156 F.3d 1030, 1035 n.2 (10th Cir. 1998) (stating that defendant has a duty to investigate potential reasons for removal within the first thirty days of receiving a complaint). If there is no federal subject matter jurisdiction in light of the improper removal, it disposes the entire case because the District Court would be "without jurisdiction" of a primary act and thus it was "without authority" of a subsequent act premised thereupon, and mandamus will issue to reverse both acts. *De Beers Consol. Mines* v. *United States*, 325 U.S. 212, 222-223 (1945). *Cf. United States Catholic Conf.* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76-77 (1988) (Where "district court does not have subject-matter jurisdiction over the underlying action * * * process" issued thereupon "is void and an order [punishing]" thereupon "must be reversed"); *Ex parte Fisk*, 113 U.S. 713, 718 (1884) (an "order" issued by court "without jurisdiction, is void, and the order punishing [thereupon] is equally void").

Order Dated December 1, 2004 Pending Appeal," which the trial court denied.

On December 14, 2004, Defendants filed a first Motion for Contempt and/or for Sanctions alleging that Petitioner's refusal to sign the documents was in contempt of the court's order. Petitioner responded that it could not comply with the order because executing the documents would render the appeal moot. On March 1, 2004, the court of appeals allowed the appeal to proceed. App., *infra*, at 18a.

On or about March 10, 2005, the defendants filed a paper entitled "Second Motion for Contempt and for Sanctions," arguing that an EEOC charge by Dr. Chaganti against the hospital was in contempt of the District Court's order. On April 4, 2005, Petitioner subpoenaed nonparty hospital to collect evidence related to this second motion for contempt in light of the subsequent discovery that the hospital had repudiated any settlement[2].

On April 11, 2005, the District Court held a hearing and quashed the subpoenas Petitioner issued. On April 14, 2005, without the benefit of an evidentiary hearing or jury trial, the District Court entered an order that Petitioner was in contempt pursuant to its December 1, 2004 order and imposed a fine of $500 per day "from the date of this order". On the following day, April 15, 2005, the District Court served the order on Petitioner. App., at 19a-21a.

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[2] One of the bases of defendants' motion for contempt was that Dr. Chaganti did not "resign." But there was nothing to resign from, because on March 29, 2005, the hospital notified Petitioner that it removed Dr. Chaganti from its staff. This made any alleged settlement voidable for repudiation or impossibility. The court of appeals ignored did not take note of all key facts.

Petitioner filed a writ of mandate and for stay with the Court of Appeals for the Eighth Circuit, pursuant to which the Court of Appeals stayed the order of contempt. App., at 16a. After consolidating the petition for writ with the appeal on substantive matters, the court of appeals affirmed the District Court's power to hold a party in contempt while an appeal was pending, but vacated the monetary sanction and remanded the matter to the District Court to determine whether the contempt finding was coercive or remedial in nature. App., at 1a-14a.

Before Petitioner has had an opportunity to file for a Writ of Certiorari with this Court, the District Court once again announced that it would hold a hearing on the issue of contempt on March 8, 2007. This Petition follows.

ARGUMENT

I. THE WRIT OF MANDAMUS IS AVAILABLE TO ADDRESS JUDICIAL USURPATIONS OF POWER, TRANSGRESSIONS OF AUTHORITY BY LOWER COURTS AND TO PROTECT CONSTITUTIONAL RIGHTS OF LITIGANTS.

Under the All Writs Act, 28 U.S.C. § 1651(a), this Court has the power to issue a writ of mandamus either in the exercise of its appellate jurisdiction or if it is necessary to enable the Court to exercise its appellate jurisdiction. Fed. R. App. P. 21(a); *Marbury* v. *Madison,* 1 Cranch 137, 175 (1803). It is settled that a writ of mandamus is properly granted to (a) protect the superior court's mandate, see *General Atomic Co.* v. *Felter*, 436 U.S. 493, 497 (1978), or (b) restrain an inferior court from detours into areas in which it lacks jurisdiction (or, in some instances, forcing an inferior court to take an obligatory action), see *Ex parte Republic of Peru*, 318 U.S. 578, 583 (1943).

The writ of mandamus has been traditionally issued "'to confine an inferior court to a lawful exercise of its

prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Will v. United States*, 389 U.S. 90, 94 (1967). Mandamus is proper in cases involving "judicial usurpations of power" by inferior courts. *Id.*, at 95(citation and quotes omitted). "[W]hen a court has no judicial power to do what it purports to do – when its action is not mere error but usurpation of power – the situation falls precisely within" the perimeters of mandamus and the "inquir[y]" turns upon "whether the District Court is empowered to enter the order under attack." *De Beers Consol. Mines* v. *United States*, 325 U.S. 212, 217 (1945); *Delaware, Lackawanna & Western RR Co.* v. *Rellstab*, 276 U.S. 1, 5 (1928) (to reverse an "unwarranted attempt" by a district court "to set aside a judgment it had no jurisdiction to touch"); *McCargo* v. *Chapman*, 61 U.S. 555, 557 (1858) (to compel a lower court to "set * * * aside or quash" an "execution * * * issued" but "not authorized" when such court refuses to do so by motion).

Mandamus is also available where a district court denies clearly established constitutional rights to a litigant. A right to appeal is sacrosanct among the constitutional rights of a litigant under the Due Process Clause. *Cf. Beacon Theaters, Inc. v. Westover*, 359 U.S. 500, 511 (1959) ("There can be no doubt that a litigant is entitled to a writ of mandamus to protect a clear constitutional right" to jury trial).

In this extraordinary ruling, though the District Court couched the order as forcing compliance with its prior order that it did not stay, the result of the order holding Petitioner in contempt is to punish the Petitioner for appealing its decision, which action clearly exceeds the District Court's authority and jurisdiction. See *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). A lower court should not be able to prevent a review of its decision.

Due to the coercive nature of the District Court's holding, appellate review of the challenge order will be defeated if a writ does not issue. See *Maryland* v. *Soper*, 270 U.S. 9, 29-30 (1926). There is no compelling logic to support usurpation of appellate authority by a lower court.

II. THE DISTRICT COURT'S CONTEMPT ORDER USURPS THE HIGHER COURT'S APPELLATE AUTHORITY BY FORCING AN APPEALING PARTY TO TAKE ACTIONS THAT WOULD RENDER THE PENDING APPEAL MOOT

A. The District Court lacked jurisdiction to interfere with a matter that was on appeal.

In this case, the District Court never entered a "final" order. Instead, it entered an interlocutory order that the parties had settled, retained jurisdiction to enforce settlement and to impose sanctions if Petitioner did not comply. App., at 18a. Petitioner filed a timely notice of appeal from that order. When the Eighth Circuit asked Petitioner to justify appellate jurisdiction from a non-final order, Petitioner relied on *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949) and argued that the case fell under the statutory or judicially created exception to the finality doctrine because of the nature of the District Court's order, which required the parties to file a dismissal of the case, would be effectively unreviewable on appeal. The Eighth Circuit allowed the appeal. App., at 17a.

Once a higher court accepted jurisdiction over the order and the appeal, it was an error for the District Court to continue to exercise jurisdiction over the same issue and take actions that would interfere with a higher tribunal's authority. See *Marrese* v. *Am. Academy of Orth. Surgeons*, 470 U.S. 373, 378-79 (1985). "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the District Court of its control over those aspects of the case involved

in the appeal." *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

Contrarily to this settled rule that a notice of appeal transfers jurisdiction over the appealed matters to the higher tribunal, the District Court held that the Petitioner was in contempt because Petitioner did not comply with the order that was on appeal and sign the documents. Not only was there no jurisdiction retained in the District Court as to the issues on appeal, but also Due Process cannot permit such complex situations.

B. The District Court exceeded its authority when it attempted to coerce compliance with its order aimed at rendering the pending appeal moot.

Moreover, compliance with the District Court's order, if clear and unequivocal, would have rendered the pending appeal moot. See, *e.g.*, *In re Grand Jury Subpoenas Duces Tecum*, 78 F.3d 1307 (8th Cir. 1996)(The "existence of a live case or controversy is a constitutional prerequisite to the jurisdiction of the federal courts.") "Consequently, federal courts have no authority to render decisions upon moot questions." *Id.* (citing *Church of Scientology of Cal.* v. *United States*, 506 U.S. 9, 12 (1992)). "[I]f during the pendency of an appeal, an event occurs which destroys the court's ability to render the prevailing party "'any effectual relief whatever,'" the appeal will be dismissed as moot. *Id.* (quoting *Mills* v. *Green*, 159 U.S. 651, 653 (1895)). Accordingly, complying with the District Court's order would have meant that Petitioner consented to the alleged "settlement" agreement according to the terms of the defendants[3], rendering the appeal moot.

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[3] Separately, that alleged "settlement" fails for want of consideration and is also voidable as being a product of unlawful threats of extortion.

The finding of contempt therefore violates the litigant's right to appeal, the higher tribunal's supervisory authority, the Due Process Clause, and the doctrine of open access to courts. No party should face the impossible choice of contempt sanctions on the one hand and loss of right to appeal on the other.

C. Compliance with the District Court's order was impossible because it was vague and uncertain as to the documents to be signed.

The District Court's order of contempt was based on the alleged refusal of the Petitioner to sign unspecified "documents." But the District Court did not specify which documents were to be signed or what terms bound the parties in settlement. Petitioner argued that one should not be held in contempt of violating an uncertain order.

The Eighth Circuit, while acknowledging that the District Court's order was indefinite and uncertain as to terms of settlement and the documents to be executed, held that the District Court had the power to hold a party in contempt for violating an order that was on appeal. App., at 13a. As to uncertainty of the order, the Eighth Circuit stated that the onus was on the Petitioner to find out what the District Court ordered by filing a motion for clarification. *Id.*, at n.2 ("If the court's order was vague, then C&A should have requested additional guidance from the court. By failing to do anything, C&A violated the order.")

According to the Eighth Circuit, therefore, one could be held in contempt of a District Court's order that was unclear, uncertain, indefinite or vague. This is wrong because it violates the rule of lenity. See *Dunn* v. *United States*, 442 U.S. 100, 112 (1979)(stating that the rule of lenity furthers the constitutional due-process principle "that

no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited.") Accord, *Brunton* v. *Superior Court*, 20 Cal. 2d 202, 205 (1942)("The party bound by an injunction must be able to determine from its terms what he may and may not do; he cannot be held guilty of contempt for violating an injunction that is uncertain or ambiguous, just as he may not be held guilty of violating a criminal statute that fails to give him adequate notice of the prohibited act.") (citations omitted). Contrary to the settled law that vague language cannot support a contempt finding, the Eighth Circuit stood the concept of void for vagueness on its head. Mandamus is the only remedy to correct this extraordinary expansion of the law of contempt.

III. THE DISTRICT COURT DID NOT GIVE PETITIONER DUE PROCESS PROTECTIONS BEFORE FINDING IT IN CONTEMPT, IGNORED LEGITIMATE REASONS FOR NONCOMPLIANCE AND ENTERED AN UNNECESSARY CONTEMPT ORDER.

A. The District Court's finding of contempt violated the Due Process Clause.

Due Process requires that the court place a party on notice of the nature of sanction before depriving the party of property right, which is the result of the instant contempt finding. *Memphis Light, Gas & Water Div.* v. *Croft*, 46 U.S. 1, 16 & 20 (1979). Due Process also requires a meaningful opportunity to prepare for a hearing. *Id.*, at 14.

On December 1, 2004, the District Court stated that Plaintiff would be subject to "sanctions" if it did not execute the documents settling the case, but did not specifically state the nature of the sanctions or that it would hold Petitioner in contempt and thereafter impose monetary sanction as well. As argued above, nor was there any transparency as to what "documents" were to be executed. Because the District Court did not apprise Petitioner of the

nature of sanction it would impose, the contempt finding violated the Due Process Clause.

On April 4, 2005, Petitioner subpoenaed two nonparties including the hospital[4], which possessed information contradicting the defendants' assertions in the motion for contempt. On defendants' request, the district judge quashed the subpoenas at the April 11, 2005 hearing and thus prevented Petitioner from establishing information relating to the contempt motion. Because the District Court did not permit Petitioner to establish facts supporting Petitioner's argument, the finding of contempt violated the Due Process Clause.

B. The District Court ignored Plaintiff's legitimate reasons for noncompliance.

If it was a civil contempt, a party against whom a proceeding is initiated may assert "a present inability to comply with the order in question." *United States* v. *Ryland*, 450 U.S. 752, 757 (1983) (citations omitted). A court "cannot be blind to evidence that compliance with an order was factually impossible" as it is the case here because the matter was on appeal and compliance would render the appeal moot. See *id.* "Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action." *Id.* Because Plaintiff has met its burden of showing that the matter was on appeal and compliance would be impossible in view of the pendency of the appeal, there is no contempt of the District Court's order, which lost jurisdiction. Peculiarly, the District Court acknowledged in its ruling that the matter was pending with the court of appeals and

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[4] Though these nonparties did not have any standing with the district court, the district judge nevertheless entertained their motion for contempt and sanctions.

still ruled that it could enforce the matter, which in effect undercuts the higher court's authority.

C. Because there was no opportunity to purge any contempt, the sanction was criminal in nature, which required a jury trial.

Here, the district judge entered the contempt order on April 14, 2005 requiring that Petitioner pay $500 per day "from the date of the order" but served the order on Petitioner on April 15, 2005. Therefore, by the time Plaintiff learned of the order, there was no opportunity, even theoretically, to purge the contempt, which makes it a criminal contempt. In civil contempt, "the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus carries the keys of his prison in his own pocket," see *International Union, United Mine Workers of America* v. *Bagwell*, 512 U.S. 821, 828 (1994), and "a completed act of disobedience that the contemnor cannot avoid" is criminal in nature. *Id.* And in the case of criminal contempt, the District Court is required to find contempt "beyond a reasonable doubt" pursuant to a jury trial. *Id.*, (requiring jury trials in criminal contempt citations. Here, the District Court did not hold a jury trial, nor did it find contempt "beyond a reasonable doubt."

D. The threat of contempt was unnecessary because the issues on appeal would have determined the validity of any settlement

Under these circumstances, a contempt proceeding not only interferes with the higher tribunal's authority, but also is totally unnecessary because the correctness of the District Court's order would be determined on appeal. There was no reason to invoke potent contempt powers to achieve that which would happen naturally in due course.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests a writ of mandamus directing District Judge Henry E. Autrey to vacate his order of contempt against Petitioner, and grant such other and further relief as is proper and just.

Respectfully submitted,

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APPENDIX

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 05-1101/05-2075

Chaganti & Associates, P.C.,
Appellant,
v.
Thomas Nowotny; Roger V. Vardeleon,
Appellees.

Appeals from the United States
District Court for the
Eastern District of Missouri

No. 05-2065

In re: Chaganti & Associates, P.C.,
Petitioner,
Petition for Writ of Mandamus

Submitted: September 29, 2006
Filed: December 5, 2006

Before RILEY and COLLOTON, Circuit Judges, and KYLE[1], District Judge.

COLLOTON, Circuit Judge.

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[1] The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, sitting by designation.

Chaganti & Associates, P.C., ("C&A"), brought an action in Missouri state court alleging that the defendants, Thomas Nowotny and Roger Vardeleon, interfered with the corporation's economic advantage, conspired to injure its business, and restrained trade. Nowotny and Vardeleon removed the case to the United States District Court for the Eastern District of Missouri, and the district court denied C&A's motion for remand.

Roughly a year and a half later, the district court found that all parties had agreed to settle the case, and granted the defendants' motion to enforce settlement.

After C&A's principal, Dr. Suren Chaganti, refused to sign the settlement documents, the court held C&A in contempt of court. C&A appeals the district court's denial of remand, the grant of the defendants' motion to enforce settlement, and several other rulings. C&A also petitions for a writ of mandamus to vacate the court's contempt and sanctions order. A panel of this court consolidated these matters and granted a stay pending appeal of the district court's contempt and sanctions order. We now deny the petition for writ of mandamus and affirm all of the district court's orders, except for the order imposing sanctions for contempt of court.

I.

Chaganti and Associates, P.C., is a corporation owned entirely by Suren Chaganti ("Dr. Chaganti"), a psychiatrist. Dr. Chaganti maintained staff privileges at the St. Anthony's Medical Center in St. Louis, Missouri. While Dr. Chaganti was at St. Anthony's, the medical center's Behavioral Health Care Review Committee began an inquiry into his practice. Thomas Nowotny was chair of the Review Committee. Based on the results of the committee's inquiry, Roger Vardeleon, then president of the St. Anthony's medical staff, sent Dr. Chaganti a letter in March 2002. The letter stated that Dr. Chaganti's staff privileges could be revoked if he did not fulfill certain

certification and educational requirements. Dr. Chaganti did not fulfill these requirements, and in June 2003, the St. Anthony's Medical Executive Committee recommended that the medical center terminate Dr. Chaganti's staff privileges.

On February 20, 2003, several months before the Medical Executive Committee recommended that Dr. Chaganti's privileges be terminated, C&A filed a petition in St. Louis City Circuit Court alleging that Nowotny and Vardeleon had interfered with C&A's economic advantage, conspired to injure its business, and restrained trade. The petition did not indicate the state or federal laws on which the claims were based.

On March 28, 2003, Nowotny and Vardeleon filed a motion to transfer the case within the Missouri court system to St. Louis County. In C&A's response to this motion, filed on April 4, C&A alleged for the first time that Nowotny and Vardeleon had "violated antitrust laws of the United States." Based on this allegation, Nowotny and Vardeleon filed a notice of removal in the United States District Court for the Eastern District of Missouri on April 18, 2003. C&A then moved to remand the case to state court on the ground that removal was untimely, but the district court denied the motion.

After the case was removed to federal court, Winthrop Reed, an attorney for Nowotny and Vardeleon, began to discuss the possibility of settlement with C&A's attorney, Naren Chaganti ("Naren"). According to Reed's sworn declaration, on August 25, 2004, he and Naren entered into a settlement agreement on behalf of C&A, Nowtony, Vardeleon, and St. Anthony's Medical Center. According to Reed, the agreement had the following terms: Dr. Chaganti agreed to complete specified educational requirements, dismiss this case and another he had filed in state court, sign a mutual release, and execute a letter withdrawing his application for reappointment to the

medical staff at St. Anthony's. After all parties executed the mutual release, the executed documents would be held in escrow. The Medical Executive Committee then would be notified that the matter was settled and would conclude its investigation of Dr. Chaganti. Provided that the Committee closed its investigation and determined that it was not required to report Dr. Chaganti to the National Practitioners Data Bank, the executed documents would be released from escrow.

On August 27, 2004, the parties filed a joint motion with the district court requesting an extension of time on all dates. The motion advised the court that the parties had reached an "agreement in principle," and requested additional time to conclude settlement arrangements. In September 2004, Reed drafted the documents called for by the alleged agreement and gave them to Naren for review. According to Reed's declaration, Naren approved these documents and said that Dr. Chaganti would sign them. Reed avers that on October 1, Naren informed him that Dr. Chaganti had decided that he would not withdraw his application for reappointment to St. Anthony's, and thus would not sign the settlement documents.

After Dr. Chaganti declined to sign the settlement documents, Nowotny and Vardeleon filed a motion to enforce the alleged settlement. Reed attached a sworn declaration describing the course of settlement negotiations, and he also attached the unsigned settlement documents. Chaganti's response denied that any such agreement existed. On November 30, 2004, the court held a hearing on the motion to enforce settlement, during which the court questioned Reed and Naren about their negotiations. Naren acknowledged that he had discussed the possibility of settlement with Reed, but insisted that they had reached no agreement and that he had no authority to settle the case. The court also spoke briefly with Dr. Chaganti by telephone during the hearing. At the close of

the hearing, the court ruled that Naren did have authority to enter into a settlement agreement and that he had done so. Consequently, the court granted Nowotny and Vardeleon's motion to enforce settlement and ordered Dr. Chaganti to "execute the required documents necessary to effectuate the parties' settlement of this matter within ten (10) days." (J.A. at 336). The court also warned C&A that "[f]ailure to comply with this order may result in the imposition of sanctions." (*Id.*).

Dr. Chaganti never signed any of the settlement documents, and on April 14, 2005, the court granted the defendants' motion to hold C&A in contempt, sanctioning C&A five hundred dollars per day until Dr. Chaganti signed the settlement documents. On April 15, 2005, C&A filed a petition for writ of mandamus challenging this ruling, and on August 23, 2005, we stayed the ruling pending appeal.

II.

C&A appeals the district court's denial of its motion to remand the case to Missouri state court on the ground that removal to federal court was improper. We review *de novo* the district court's exercise of removal jurisdiction and denial of a motion to remand. *United States v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001).

The federal removal statute provides that a civil defendant generally must file a notice of removal within thirty days of receiving the initial pleading setting forth the claim of relief. 28 U.S.C. § 1446(b). The statute also provides, however, that if the "case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." *Id.*

Under the "well-pleaded complaint rule," a case in which federal jurisdiction is based on a federal question

ordinarily is not removable unless the "federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). C&A's original petition was entitled "Petition for Interference in Business Advantage; Conspiracy to Injure a Business; Unlawful Restraint of Trade." (J.A. at 19-27). It made no reference to any federal statute and did not advance any claim that was necessarily based on federal law. The only legal citation in the petition referred to a business interference case decided by the Missouri Supreme Court under Missouri law. (*Id.* at 21, 24). The most natural reading of the petition was that it contained claims based on Missouri law. The petition did not include allegations from which the defendants reasonably should have ascertained that the case was removable.

C&A first asserted that it was advancing a federal claim on April 4, 2003, in its response to the defendants' motion to transfer. Unlike C&A's initial complaint, the response contained an explicit reference to "antitrust laws of the United States." At that point, it was clear that the petition raised a federal claim, and the thirty-day period for removal commenced at that time.

C&A contends that under the "artful pleading doctrine," the case was removable when C&A filed its petition in February. The artful pleading doctrine, a corollary to the well-pleaded complaint rule, allows a defendant to remove a case to federal court when the plaintiff has attempted to defeat removal by failing to plead a necessary federal question. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). "[C]ourts will not permit plaintiff to use artful pleading to close off defendant's right to a federal forum," *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (1981) (internal quotation omitted), and the doctrine of artful pleading is designed to protect the right of defendants to have federal claims against them tried in federal court.

The artful pleading doctrine has no application in this case. A federal antitrust claim was not necessary to the claims alleged in C&A's petition. Unlike a state-law claim that is completely preempted by a federal statute such as ERISA, *see Rivet*, 522 U.S. at 475, a claim of "unlawful restraint of trade" may be pleaded under the laws of Missouri alone. *See* Mo. Rev. Stat. § 416.031 (2000). Until C&A's response to the motion to transfer, the defendants had no grounds to assert that the petition necessarily involved a federal claim that permitted removal. Nowotny and Vardeleon filed their notice of removal within thirty days of the pleading that first asserted a federal antitrust claim, so the removal was timely, and the district court properly denied C&A's motion to remand.

III.

C&A also challenges the district court's order enforcing a settlement agreement between the parties. We review the court's finding that a settlement existed for clear error. *Enterprise Rent-a-Car Co. v. Rent-a-Wreck of Am., Inc.*, 181 F.3d 906, 909 (8th Cir. 1999).

Basic principles of contract formation govern the existence and enforcement of the alleged settlement, *see In re Airline Ticket Comm'n Antitrust Litig.*, 268 F.3d 619, 623 (8th Cir. 2001); *Sheng v. Starkey Labs.*, 53 F.3d 192, 194 (8th Cir. 1995), and the parties agree that Missouri law applies in this case. Under Missouri law, a valid settlement agreement need not be in writing. Unless the subject matter of the settlement is governed by the statute of frauds, a court may enforce an oral settlement agreement that contemplates the execution of documents at a later time. *Byrd v. Liesman*, 825 S.W.2d 38, 39 (Mo. Ct. App. 1992).

The essential elements of a valid settlement agreement are the involvement of parties who are competent to contract, a proper subject matter, legal consideration, mutuality of obligation, and mutuality of agreement. *L.B. v. State Comm. Of Psychologists*, 912 S.W.2d 611, 617 (Mo.

Ct. App. 1995). There is no dispute that the alleged settlement was made by parties competent to contract, and the subject matter is proper.

Consideration exists when there is a detriment to the promisee or a benefit to the promisor, *Citibank (South Dakota), N.A. v. Wilson*, 160 S.W.3d 810, 813 (Mo. Ct. App. 2005), and mutuality of obligation exists whenever there is consideration. *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 859 (Mo. 2006). The district court found that the agreement provided a benefit to C&A. Under the terms of the agreement, the St. Anthony's Medical Executive Committee would conclude its investigation of Dr. Chaganti, St. Anthony's would not report Dr. Chaganti's investigation or withdrawal to the National Practitioners Data Bank, and Nowotny, Vardeleon, and St. Anthony's would release all potential claims they had against C&A. The district court's finding that these provisions constituted consideration to C&A is not clearly erroneous, and as a consequence, there was also mutuality of obligation.

Mutuality of agreement requires "a mutuality of assent by the parties to the terms of the contract," i.e., a "meeting of the minds." *L.B.*, 912 S.W.2d at 617. A court should determine whether such a meeting of the minds took place by "looking to the intentions of the parties as expressed or manifested in their words or acts." *Id.*

Here, the district court specifically found that there had been a meeting of the minds concerning the terms of the settlement.

We conclude that the district court's finding was not clearly erroneous. Reed and Naren undertook protracted negotiations during the summer of 2004, and Reed sent Naren a written proposed settlement on August 24, 2004. The next day, Reed and Naren met to discuss this proposal, and Reed avers that Naren explicitly agreed to the settlement agreement with the stated terms in a telephone

conversation that followed the meeting. Shortly thereafter, with Naren's approval, Reed filed a joint motion with the district court stating that the parties had reached an agreement in principle. This pleading was followed by exchanges of correspondence and efforts by Reed to secure signed settlement agreements from Naren and Dr. Chaganti.

The court questioned Reed and Naren during the settlement hearing about their discussions. Naren claimed that no settlement agreement was reached and that the exchanges in August and September were simply ongoing negotiations. Reed countered that Naren explicitly agreed to the settlement agreement with the stated terms on August 25 and confirmed that agreement multiple times over the course of the following month.

The district court then made a credibility finding, believing Reed's testimony that Naren had agreed to the settlement terms over Naren's insistence that he had not.

"Credibility determinations are within the exclusive domain of the district court and are virtually unreviewable on appeal." *Enterprise Rent-a-Car*, 181 F.3d at 910 (internal quotation omitted). Given our deference to the district court's assessment of the evidence and the circumstantial evidence supporting it, we conclude that the court's finding of a settlement agreement was not clearly erroneous.

C&A argues that even if its attorney, Naren, did enter into a settlement agreement, he had no authority to do so, and that the agreement thus does not bind the corporation. Under Missouri law, an attorney cannot enter into a settlement agreement that binds a client unless that client gives the attorney authority to do so. *McDowell v. Kearns*, 758 S.W.2d 481, 482-83 (Mo. Ct. App. 1988). A court, however, will presume that an attorney has the necessary authority if the attorney's statements or conduct imply the

authority to settle. *Id.* The client then has the burden of proving that the attorney acted without authority. *Id.*

Here, the district court found, without clear error, that Naren agreed to settle the lawsuit. C&A has not presented compelling evidence to overcome the presumption under Missouri law that Naren's acts demonstrate his authority to bind his client. The district court, moreover, examined Naren and declined to credit his assertion that he lacked the necessary authority. Accordingly, we hold that the court's finding that Naren had authority to enter into the settlement is not clearly erroneous.

C&A also mounts a procedural challenge to the district court's ruling, asserting that the motion to enforce the settlement agreement was granted without an adequate evidentiary hearing. C&A argues that because only the lawyers, and not the parties, were present at the hearing, it was unable to present its evidence that no settlement agreement was reached.

"As a general rule, an evidentiary hearing should be held when there is a substantial factual dispute over the existence or terms of a settlement." *Stewart v. M.D.F., Inc.*, 83 F.3d 247, 251 (8th Cir. 1996). A court, however, need only hear so much evidence as is necessary for it to resolve the "essential issues of fact" concerning the settlement. *Id.* When deciding whether to hold a hearing, a court may also consider the need to conserve judicial resources and "the unseemliness of holding, in effect, a mini-trial to resolve a dispute between attorneys arising from their oral settlement talks." *Id.* at 252. Accordingly, when "the parties' counsel [are] the sole witnesses to their own conversations," the court may properly determine whether a settlement exists by relying exclusively on the representations of counsel. *Id.*

In this case, there was a factual dispute over the existence of the settlement, and the district court properly held a hearing on November 30, 2004. The essential issues of fact were whether Naren, C&A's attorney, had agreed to

settle the case, and, if so, whether Naren had the authority to enter into a settlement agreement. The first issue depended principally on what occurred during the settlement negotiations between the lawyers. Reed and Naren described those discussions at length during the hearing.

The court properly resolved the dispute about the existence of an agreement based on its evaluation of the representations of counsel. *Stewart*, 83 F.3d at 252. As to the second issue, the court's finding that Naren agreed to settle the case created a presumption that he had authority to do so. *McDowell*, 758 S.W.2d at 482-83. C&A bore the "heavy burden" to rebut this presumption, *Greater Kansas City Laborers Pension Fund v. Paramount Indus.*, 829 F.2d 644, 646 (8th Cir. 1987), and it had notice of the hearing and an opportunity to present evidence. Dr. Chaganti could have appeared in person if he so desired. Although it had no obligation to do so, the district court even took the initiative to contact Dr. Chaganti by telephone during the hearing so that he could address the disputed issues. Thus, C&A had a fair opportunity to make its case to the court concerning the essential issues of fact – whether Naren made an agreement and whether he had authority to do so – and we perceive no procedural flaw in the district court's handling of the matter.

IV.

C&A also challenges the district court's order holding the corporation in civil contempt and imposing sanctions. The district court retained jurisdiction to enforce its judgment notwithstanding C&A's appeal on the merits, *see In re Grand Jury Subpoenas Duces Tecum*, 85 F.3d 372, 375-76 (8th Cir. 1996), so we reject the contention that the district court lacked jurisdiction to enter the contempt order. The district court denied C&A's motion to stay the order enforcing the settlement, and absent a stay from an appellate court, the district court was within its authority to

enforce the order. On the merits, we review a district court's imposition of a civil contempt order and assessment of monetary sanctions for abuse of discretion. *Warnock v. Archer*, 443 F.3d 954, 955 (8th Cir. 2006).

C&A contends that it did not receive prior notice that failure to comply with the court's order enforcing the settlement may result in contempt sanctions. We are not persuaded by this complaint, because the court specifically advised C&A that it would be subject to sanctions if it failed to comply. (J.A. at 336). C&A also argues that the terms of the order enforcing the settlement were too vague to justify holding C&A in contempt for failing to comply. A contempt order must be based on a party's failure to comply with a "clear and specific" underlying order. *Int'l Bhd. of Elec. Workers, Local Union No. 545 v. Hope Elec. Corp.*, 293 F.3d 409, 418 (8th Cir. 2002). In this case, the underlying order to enforce settlement provided that "plaintiff shall execute the required documents necessary to effectuate the parties' settlement of this matter within ten (10) days from the date of this order. Failure to comply with this order may result in the imposition of sanctions." (J.A. at 336). Although the order did not specifically identify the "required documents," the meaning should have been clear to C&A based on previous pleadings in the case and the discussions at the hearing concerning enforcement of the settlement. Nowotny and Vardeleon attached the proposed settlement documents to their motion to enforce settlement, which was granted by the district court. Reed gave Naren copies of these documents months prior to the hearing on November 30, 2004. During the course of the hearing, Reed briefly summarized the terms of the settlement, and mentioned each of the attached documents. Naren also referred to the attached documents during the hearing. Thus, when the court granted the motion to enforce settlement and ordered C&A to execute the "necessary" settlement documents, there was no

reasonable basis for C&A or Dr. Chaganti to doubt what documents had to be signed. We thus conclude that the district court's settlement order had the clarity and specificity required to be enforced by contempt sanctions.[2]

On this record, however, we are unable to uphold the district court's imposition of monetary sanctions. A district court may impose civil contempt sanctions for one of two purposes: to compensate parties aggrieved by contumacious conduct or to coerce compliance with the court's orders. *United States v. United Mine Workers*, 330 U.S. 258, 303 (1947). When a sanction is designed to coerce a recalcitrant party to comply, the sanction should be payable to the court, rather than to the opposing party. *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 632 (1988). The court should determine the amount of the sanction only after considering "the character and magnitude of the harm threatened by continued contumacy," "the probable effectiveness of any suggested sanction in bringing about the result desired," and "the amount of [the contemnor's] financial resources and the consequent seriousness of the burden" to that particular party. *United Mine Workers*, 330 U.S. at 304. In this case, the district court imposed a fine of $500 for each day that Dr. Chaganti failed to sign the settlement documents. Although the daily nature of the sanction suggests that it may have been designed to coerce compliance, *see Int'l*

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[2] Even if the terms of the settlement had been uncertain, moreover, C&A had an obligation to seek clarification of the court's order. "[A] party to an action is not permitted to maintain a studied ignorance of the terms of a decree in order to postpone compliance and preclude a finding of contempt." *Perfect Fit Indus., Inc. v. Acme Quilting Co., Inc.*, 646 F.2d 800, 808 (2d Cir. 1981). If the court's order was vague, then C&A should have requested additional guidance from the court. By failing to do anything, C&A violated the order.

Union v. Bagwell, 512 U.S. 821, 829 (1994), the court's order is not clear that coercion was the sole purpose of the sanction. Appellees assert, to the contrary, that the sanction is "remedial in nature" and payable to them, rather than to the court. (Resp. Opp. to Pet. for Writ of Mandamus, at 12). Nor does the court's order explain whether it considered the factors that bear on the appropriate amount for a sanction, *see United Mine Workers*, 330 U.S. at 304, or how the court arrived at the sum of $500 per day. On remand, therefore, if C&A does not promptly comply with the court's order to effectuate the settlement, the court should specify whether the monetary sanctions are compensatory or coercive in nature, and explain the basis for whatever amount is ordered. *See In re Chase & Sanborn Corp.*, 872 F.2d 397, 401 (11th Cir. 1989).

V.

C&A raises several other issues, namely, that the district court erred in dismissing its state antitrust claims, in denying its motion to amend its petition, and in quashing its subpoenas. Because we uphold the district court's order enforcing settlement of all claims, these issues are moot. We reject C&A's request that the case be reassigned to a different judge on remand, as nothing in the record supports the assertion that the district court's impartiality may reasonably be questioned. We also deny C&A's motion to strike the brief of the appellees.

* * *

For these reasons, we deny the petition for writ of mandamus and affirm all orders of the district court, except for the order imposing sanctions for contempt of court, which is vacated. The case is remanded for further proceedings consistent with this opinion.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 05-1101
Chaganti & Associates, P.C.,
Appellant
v.
Thomas Nowotny and Roger V. Vardeleon,
Appellees

No: 05-2065
In re: Chaganti & Associates, P.C.,
Petitioner

No: 05-2075
Chaganti & Associates, P.C.,
Appellant
v.
Thomas Nowotny and Roger V. Vardeleon,
Appellees

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:03-cv-00501-HEA)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 16, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 05-1101, 05-2065 & 05-2075

Chaganti & Associates,
Appellant,

v.

Thomas Nowotny, et al.,
Appellees.

Appeal from the United States District Court for the
Eastern District of Missouri

Upon consideration of the petition for writ of mandamus and notice of appeal from the district court's April 14, 2005, contempt and sanction order, the district court order is hereby stayed pending further order of this court.

The appeals in 05-1101, 05-2075 and 05-2065 are hereby consolidated.

The clerk shall issue a revised briefing schedule.

August 23, 2005

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-1101EMSL

Chaganti & Associates,
Appellant,

v.

Thomas Nowotny, et al.,
Appellees.

Appeal from the United States District Court for the
Eastern District of Missouri

Having reviewed the parties' responses to the order to show cause, it is directed that this appeal should proceed.

The clerk is directed to prepare a briefing schedule.

March 1, 2005

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHAGANTI & ASSOCIATES, P.C.,
Plaintiff,
vs.
THOMAS NOWOTNY, et al.,
Defendants.

Case No. 4:03CV501 HEA

MEMORANDUM AND ORDER

This matter is before the Court on defendants' Motion to Enforce Settlement and for Award of Fees and Costs, [# 130] . Plaintiff has filed a written opposition to this motion. Pursuant to this Court's oral ruling at the hearing held on November 30, 2004, and for the reasons set forth during the hearing, the Motion to Enforce is granted; the motion for award of fees and costs is denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff shall execute the required documents necessary to effectuate the parties' settlement of this matter within ten (10) days from the date of this order. Failure to comply with this order may result in the imposition of sanctions.

IT IS FURTHER ORDERED that upon the expiration of the prescribed time period, defendant shall file, within five (5) days thereof, the necessary pleadings required for dismissal with prejudice of this matter.

Dated this 1st day of December, 2004.

-/s/-
HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHAGANTI & ASSOCIATES, P.C.,
Plaintiff,

vs.

THOMAS NOWOTNY and
ROGER VARDELEON,
Defendants.

Case No. 4:03CV501 HEA

ORDER

This matter is before the Court on defendants' Motion for Contempt and/or for Sanctions, [# 144], filed on December 14, and defendants' Second Motion for Contempt and/or for Sanctions, [154]. The Court held a hearing on these motions on April 11, 2005. For the reasons set forth below, the motions are granted as set forth herein.

On December 1, 2004, this Court entered a Memorandum and Order following the Court's finding that the parties had agreed to settle this matter.

Plaintiff was ordered to execute the documents necessary to effectuate the settlement. As of this date, plaintiff has failed to do so.

Although plaintiff has filed an appeal from the Court's Order, the Motion to Stay filed by plaintiff was denied by the Court. Thus, plaintiff was required by the Court's Order to execute the required documentation, and was admonished that failure to do so may result in the imposition of sanctions. Plaintiff's failure to execute the documents is in direct contravention of this Court's Order and is therefore a contempt of this Court. *See, Fisher v. Marubeni Cotton Corp*, 526 F.2d 1338, 1341 n. 2 (8th Cir. 1975); *Chicago Truck Drivers Union Pension Fund v.*

Brotherhood Labor Leasing, 207 F.3d 500, 505 (8th Cir. 2000); *Rudd, et al. v. Owens, et al.*, Cause Number 2:02CV1599 SNL, Order dated July 30, 2004.

In addition to monetary sanctions for the contempt, defendants ask this Court to enjoin plaintiff, its principal and its lawyer from pursuing an EEOC claim that has been instituted against the parties involved herein and third parties that are not a part of this suit, but are involved in the circumstances of this case. The Court does not agree with defendants that by virtue of the Order requiring plaintiff to execute the documents, the Court should also enjoin the parties from actions which defendants believe violate the settlement agreement. Defendants may be able to successfully argue, as a defense to any claims filed against them, that these claims have been released by virtue of the settlement. The fact that plaintiff has failed to execute the documents, however, does not empower the Court to enjoin plaintiff's subsequent actions, rather, the Court may only look to plaintiff's actions *vis a vis* what plaintiff was required to do as articulated in the December 1, 2004 Memorandum and Order, *i.e.* to execute the required documents. Whether plaintiff has subsequently breached the settlement agreement is a separate issue and one that is not presented to the Court through plaintiff's failure to execute the release. The question of whether there has been a breach of the parties' settlement will not be addressed by the Court through a motion for contempt.

Defendants also ask the Court to impose sanctions and find plaintiff in contempt for disclosing information allegedly learned at the Eighth Circuit Court of Appeals sponsored mediation. Because the underlying information was obtained during the proceedings in a Court other than before the undersigned, this Court believes it would be inappropriate to address the issues as they relate to that mediation, even though the alleged disclosure of the

information occurred in the matters before this Court. Accordingly,

IT IS HEREBY ORDERED that defendants' Motion for Contempt and/or for Sanctions, [# 144] and defendants' Second Motion for Contempt and/or for Sanctions, [# 154] are granted, as provided herein.

IT IS FURTHER ORDERED that plaintiff shall be sanctioned with a monetary fine of $500.00 per day, from the date of this Order until such date and time it complies with this Court's December 1, 2004 Memorandum and Order.

Dated this 14th day of April, 2005.

-/s/-

HENRY EDWARD AUTREY

UNITED STATES DISTRICT JUDGE